

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

- - - - -  
ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, : Case No. 01-CV-769  
vs. : (Judge S. A. Spiegel)  
 :  
CITY OF CINCINNATI, : VOLUME I  
et al., :  
 :  
Defendants. :  
- - - - -

Videotaped deposition of DAVID WILLIAM

HUNTER JR., a witness herein, called by the  
  
plaintiffs for cross-examination, pursuant to the  
  
Federal Rules of Civil Procedure, taken before me,  
  
Wendy Davies Welsh, a Registered Diplomate Reporter  
  
and Notary Public in and for the State of Ohio, at  
  
the offices of Helmer, Martins & Morgan Co. LPA,  
  
1900 Fourth & Walnut Centre, 105 East Fourth Street,  
  
Cincinnati, Ohio, on Thursday, November 6, 2003, at  
  
2:43 p.m.

Owensby, et al. vs. City of Cincinnati  
November 6, 2003

DAVID WILLIAM HUNTER, JR.

<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. 4 Frederick M. Morgan Jr., Esq. Helmer, Martins &amp; Morgan Co. LPA 5 Suite 1900, Fourth &amp; Walnut Centre 105 East Fourth Street 6 Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. 8 The Helbling Law Firm, L.L.C. 3672 Springdale Road 9 Cincinnati, Ohio 45251 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, 11 Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>12 Wilson G. Weisenfelder Jr., Esq.. 13 Rendigs, Fry, Kiely &amp; Dennis 900 Fourth &amp; Vine Tower 14 One West Fourth Street Cincinnati, Ohio 45202-3688 15 Phone: (513) 381-9200</p> <p>16 On behalf of the Defendants City of Cincinnati, 17 Darren Sellers, Jason Hodge:</p> <p>18 Geri Hernandez Geiler, Esq. Assistant City Solicitor and 19 Julie F. Bissinger, Esq. Chief Counsel 20 Department of Law Room 214, City Hall 21 801 Plum Street Cincinnati, Ohio 45202 22 Phone: (513) 352-3346</p> <p>23</p> <p>24</p>	<p>Page 4</p> <p>1 Federal Rules of Civil Procedure, may be taken at 2 this time by the notary; that said deposition may be 3 reduced to writing in stenotype by the notary, whose 4 notes may then be transcribed out of the presence of 5 the witness; and that proof of the official 6 character and qualifications of the notary is 7 expressly waived.</p> <p>8</p> <p>9</p> <p>10 I N D E X</p> <p>11 Examination by: Page</p> <p>12 Mr. Martins . . . . . 5</p> <p>13</p> <p>14</p> <p>15 E X H I B I T S</p> <p>16 Page</p> <p>17</p> <p>18 Deposition Exhibit 6A . . . . . 89 Deposition Exhibit 54 . . . . . 29 19 Deposition Exhibit 55 . . . . . 43 Deposition Exhibit 56 . . . . . 62 20 Deposition Exhibit 57 . . . . . 64 Deposition Exhibit 58 . . . . . 67</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>Page 3</p> <p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellens and 3 Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus &amp; Marks, LLC 5 915 Cincinnati Club Building 30 Garfield Place 6 Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 On behalf of the David William Hunter Jr.:</p> <p>8 Jay Clark, Esq. 9 114 East 8th Street Suite 400 10 Cincinnati, Ohio 45202 Phone (513) 587-2887</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Damstrom, Law Clerk 14 Helmer, Martins &amp; Morgan Co., L.P.A.</p> <p>15 Mr. Roger Owensby</p> <p>16 Mrs. Brenda Owensby</p> <p>17</p> <p>18</p> <p>19</p> <p>20 S T I P U L A T I O N S</p> <p>21 It is stipulated by and among counsel for the 22 respective parties that the deposition of DAVID 23 WILLIAM HUNTER JR., a witness herein, called by the 24 plaintiffs for cross-examination, pursuant to the</p>	<p>Page 5</p> <p>1 VIDEOGRAPHER: Time is 2:43 p.m. The date 2 is November the 6th. The year is 2003.</p> <p>3 If you'd please swear the witness, ma'am.</p> <p>4 DAVID WILLIAM HUNTER JR.</p> <p>5 being by me first duly cautioned and sworn, deposes 6 and says as follows:</p> <p>7 VIDEOGRAPHER: We're on the record, Mr. 8 Martins. This is videotape number 1, sir.</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MR. MARTINS:</p> <p>11 Q. Sir, would you state for the record your 12 full name, please.</p> <p>13 A. David William Hunter Jr.</p> <p>14 Q. And your age?</p> <p>15 A. 36.</p> <p>16 Q. Date of birth?</p> <p>17 A. 5/20/67.</p> <p>18 Q. What is your height?</p> <p>19 A. 5' 7."</p> <p>20 Q. And on November 7th of 2000 what was your 21 weight?</p> <p>22 A. Approximately 175.</p> <p>23 Q. Have you ever had your deposition taken 24 before?</p>

<p style="text-align: right;">Page 54</p> <p>1 recollection of seeing Roger Owensby before 2 September of 2000? 3 A. N-- 4 Q. Correct? 5 A. No. As far as what I just said. 6 Q. Right. 7 A. I know it's kind of confusing, but I'm 8 trying to answer as truthful as possible. 9 Q. Right. You have no recollection of seeing 10 Roger Owensby before September of 2000? 11 A. Right. Okay. 12 Q. Okay. Walk me through what happened in 13 September of 2000. 14 A. Me and Officer Jorg were working 15 plainclothes, old clothes, and we were doing an 16 investigation in front of the Sam's Drive Thru. It 17 was three to four individuals that we observed 18 making drug transactions. We wanted to stop those 19 individuals. 20 Officer Jorg stayed with -- with one or 21 two of the individuals and then two of the 22 individuals went across the street, across from 23 Sam's Drive Thru, across -- that would be Seymour, 24 in the direction of Huntington Meadows Apartment</p>	<p style="text-align: right;">Page 56</p> <p>1 And he said, "What's that?" Or something 2 to that nature. 3 I said, "You can't be telling people" -- 4 as I was saying this to him, I reached into my shirt 5 with my other hand. I was wearing my badge on a 6 chain around my neck. "You can't be telling -- 7 you -- you can't be warning people that the -- the 8 police is here. That's -- and -- that's interfering 9 with an investi"-- 10 As I was saying investigation or whatnot, 11 I flipped my badge out and it dropped down dangling 12 around my neck. When he saw my badge, he pushed me 13 off him, and I grabbed the back -- 14 He had a hooded sweat shirt on. I grabbed 15 the back of his sweat shirt, and he tugged and 16 pulled and his sweat shirt ripped. And I was just 17 basically standing there holding his sweat shirt, 18 because he ripped right out of it. 19 At that point I -- I actually drew my 20 weapon. And I told him, "Don't move." You know, 21 "Freeze." He -- he kind of faked to the left, to 22 the right or whatever, and took off running. I had 23 no intention of shooting. I -- I didn't have the 24 authority to shoot him, and he probably knew that.</p>
<p style="text-align: right;">Page 55</p> <p>1 complex. So I responded across the street behind 2 them. 3 Another uniform car -- another uniform car 4 met me across the street, and that officer was 5 Officer Walker. I advised Officer Walker to go 6 around, because I wanted him to flank the two guys 7 we were trying to catch up to. 8 Because I could pretty much walk up to 9 them, because they probably wouldn't -- wouldn't 10 have taken me as being a police officer, but Officer 11 Walker was in uniform of the day. 12 After we had that discussion, I started in 13 one direction. Officer Walker started in another 14 direction. That's when Mr. Owensby alerted the 15 individuals that we were trying to catch up to to 16 apprehend that the police were coming and that we 17 were in the area. So they got away, because they 18 had a jump on us anyway, because -- and they're 19 already behind -- around the building. 20 So I walked up to Mr. Owensby and I put my 21 left hand on his shoulder. And I said, "What's up?" 22 And he replied, "What's up?" 23 And then I said, "You know, you can't be 24 doing what you just did."</p>	<p style="text-align: right;">Page 57</p> <p>1 That's why he probably took off running. 2 I gave chase. We ran through Huntington 3 Meadows, between the buildings, out onto Rhode 4 Island, into the intersection of Rhode Island and 5 Seymour. 6 Right there at the traffic light is a 7 crosswalk. There was a car stopped at a red light. 8 I was chasing Mr. Owensby around the car. We 9 actually went -- circled the car once or twice. And 10 then he proceeded toward -- in the direction -- on 11 Seymour in the direction of Reading Road down the 12 sidewalk. 13 At that point I was able to put my -- 14 secure my weapon and I went to Mace, my chemical 15 spray. He was running down the sidewalk, and at 16 some point he tripped and fell on his own. And I 17 was trying to run up to him to Mace him, but I was 18 running and spraying at the same time. So some of 19 the chemical irritant sprayed back toward me. 20 He was on the ground. He managed to make 21 his way by using his hands and his feet, making his 22 way back to his feet. He then ran in between some 23 apartment buildings. 24 I continued to chase him. He ran into one</p>

<p style="text-align: right;">Page 70</p> <p>1 up and we got out.</p> <p>2 Q. Okay.</p> <p>3 A. But I don't know. Because I don't recall</p> <p>4 or remember exactly where we stopped and parked the</p> <p>5 car, because we still had to try to get up to them</p> <p>6 before they spotted the -- the Neon.</p> <p>7 Q. Right. Okay. So regardless of how you</p> <p>8 got out of the car or -- or where you parked the</p> <p>9 car, do you have a recollection of what side of</p> <p>10 Sam's Carry Out you approached the individuals from?</p> <p>11 A. No. I -- I really can't remember. I'm</p> <p>12 sorry. I can't remember exactly.</p> <p>13 Q. What is your best recollection of -- at --</p> <p>14 at some point, though, the individuals -- well,</p> <p>15 what --</p> <p>16 A. Two of the individuals started walking</p> <p>17 across the street.</p> <p>18 Q. Okay. Toward Huntington Meadows?</p> <p>19 A. Huntington Meadows, yes.</p> <p>20 Q. All right. Would you draw with a pen, an</p> <p>21 arrow, indicating the path that the two individuals</p> <p>22 took from the phone booth to cross the street. And</p> <p>23 you can do it on the -- probably on the aerial</p> <p>24 photograph will probably be the easiest one.</p>	<p style="text-align: right;">Page 72</p> <p>1 Sunoco side or the -- the side of the street where</p> <p>2 Integrity Hall was at. I don't remember exactly</p> <p>3 where. I just remember he met up with me on this</p> <p>4 side of the street in the direction --</p> <p>5 On the -- on the diagram, in the direction</p> <p>6 that they were walking, he met up with me right</p> <p>7 before you actually get to the -- the buildings of</p> <p>8 the, you know, the apart-- where the apartment</p> <p>9 buildings actually start, Huntington Meadows.</p> <p>10 Q. Okay. I'm going to ask you, on the aerial</p> <p>11 photograph, draw first a circle around Integrity</p> <p>12 Hall.</p> <p>13 A. (Witness complies.)</p> <p>14 Q. All right. And put an "I" in there.</p> <p>15 A. (Witness complies.)</p> <p>16 Q. Second thing is draw a W in a circle where</p> <p>17 Officer Walker met up with you.</p> <p>18 A. Hmm-hmm. (Witness complies.)</p> <p>19 Q. And at that -- am I correct in</p> <p>20 understanding from what you've told me at that point</p> <p>21 you and Officer Walker decided to split up to flank</p> <p>22 the two people that were walking away?</p> <p>23 A. Yes. Our -- our intention was -- if he</p> <p>24 made it around there, they see him, he would flush</p>
<p style="text-align: right;">Page 71</p> <p>1 A. (Witness complies.)</p> <p>2 Q. Okay. And then once they -- if you could</p> <p>3 continue that across the street in which -- whatever</p> <p>4 direction they walked.</p> <p>5 A. (Witness complies.)</p> <p>6 Q. Thank you. Now, at this point did you and</p> <p>7 Officer Jorg approach the two individuals that</p> <p>8 stayed?</p> <p>9 A. Yes. And then that's when Officer Jorg</p> <p>10 said he had them. Because we had other cars coming</p> <p>11 and in the area.</p> <p>12 Q. All right. So Officer Jorg stays --</p> <p>13 A. Uh-huh. And then I --</p> <p>14 Q. -- with those two?</p> <p>15 A. Right. And then I --</p> <p>16 Q. You --</p> <p>17 A. I go after the two, walking with Officer</p> <p>18 Walker.</p> <p>19 Q. Okay. Officer Walker was there at the</p> <p>20 time?</p> <p>21 A. He was just pulling up.</p> <p>22 Q. Okay. Where did Officer Walker pull his</p> <p>23 car up?</p> <p>24 A. I don't remember if he parked it on the</p>	<p style="text-align: right;">Page 73</p> <p>1 them to me, but if they -- or vice versa. If they</p> <p>2 identify me or assume that I'm a police officer,</p> <p>3 because, you know, they look back and notice that</p> <p>4 Jorg was standing there with the two guys detained,</p> <p>5 that I would flush him to Curtis, to Officer Walker.</p> <p>6 Q. Now, the building -- the building that you</p> <p>7 and Officer Walker were going to do this flanking</p> <p>8 maneuver around, was that a Huntington Meadows</p> <p>9 apartment?</p> <p>10 A. Yes. Because we were -- we were like --</p> <p>11 it's like right there, right -- right -- right where</p> <p>12 they -- they -- the actual buildings start. And</p> <p>13 then to the left I think it -- it was not, but to</p> <p>14 the right it was Huntington Meadows buildings.</p> <p>15 Q. Can you identify that building on this</p> <p>16 aerial photograph?</p> <p>17 A. Oh, boy. Maybe. I'm thinking this one --</p> <p>18 Q. Just draw a circle around it.</p> <p>19 A. -- here.</p> <p>20 Q. Put the letter H in there.</p> <p>21 A. H.</p> <p>22 Q. Okay. So that's the building that you and</p> <p>23 Officer Walker are going to do this flanking</p> <p>24 maneuver around?</p>

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1 A. Well --  
 2 Q. Did you want to say something?  
 3 A. It was not -- it was not a set -- like  
 4 a -- like a -- just one building. It was like  
 5 buildings. It was --  
 6 Q. Okay.  
 7 A. You know, it was -- it was like two or  
 8 three like together, but you can go through the  
 9 courtyard and then you can come around, and there's  
 10 like a building here on the right (indicating).  
 11 That's the way Curtis went, Officer Walker. And  
 12 then I was going to cut through.  
 13 Q. All right. At some point, then, you  
 14 folk-- you and Officer Walker split up and you start  
 15 to go your way and he goes his, right?  
 16 A. Yes.  
 17 Q. At that point someone says something to  
 18 warn the two individuals; is that right?  
 19 A. Yes.  
 20 Q. That's the next thing that happens?  
 21 A. Yes.  
 22 Q. Okay. And that person, if I'm  
 23 understanding you correctly, was Mr. Owensby?  
 24 A. Yes.

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1 Q. Are you sure of that?  
 2 A. Yes.  
 3 Q. What is the best of your recollection of  
 4 what Mr. Owensby said?  
 5 A. It was, The boys or Five-oh.  
 6 Q. Say that again.  
 7 A. It was either, The boys or Five-oh.  
 8 Q. And in response to what -- could you see  
 9 the two individuals at the time Mr. Owensby said  
 10 this?  
 11 A. They would -- they were just -- as he said  
 12 it, they were just leaving out of my view.  
 13 Q. Did you see -- so then you could not see  
 14 what, if anything, they did in response?  
 15 A. Oh. Ran.  
 16 Q. You did see that?  
 17 A. Yes. Uh-huh.  
 18 Q. Okay. Do you know if Mr. Owensby said  
 19 that toward them or was saying it to someone else?  
 20 A. He's saying it toward them, because he  
 21 turned to them and said it, in their direction.  
 22 Q. Do you know where Officer Walker was at  
 23 the time?  
 24 A. No.

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1 Q. Do you know if the individuals started  
 2 running because of what Mr. Owensby said or because  
 3 they saw a uniformed officer?  
 4 A. Beca--  
 5 MR. HARDIN: Objection.  
 6 You may answer.  
 7 A. Because of what Mr. Owensby said. Because  
 8 when that happened, Officer Walker didn't have  
 9 enough time to get around. So they -- they had --  
 10 they had -- they -- they couldn't have possibly even  
 11 seen him yet.  
 12 Q. But as I understand it, Mr. Owensby was  
 13 not one of the four individuals that you and Officer  
 14 Jorg had observed conducting drug activity at the  
 15 phone booth?  
 16 A. That's correct.  
 17 Q. He was just somebody that you happened  
 18 upon as you were going around the building?  
 19 A. Yes.  
 20 Q. At that point, as I understand it, you  
 21 walk up to Mr. Owensby and put your left hand on his  
 22 shoulder?  
 23 A. Yes.  
 24 Q. What shoulder did you put it on?

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1 A. On his left shoulder.  
 2 Q. Were you facing him face to face or did  
 3 you come up from behind?  
 4 A. Walking to his right, right beside him.  
 5 Q. So you put your left arm -- you're --  
 6 you're to his -- his right and you put your left  
 7 hand on his left shoulder?  
 8 A. Yes.  
 9 Q. And you say "What's up?" And he says,  
 10 "What's up?" And you say, you know, You can't be  
 11 doing that, or something like that, right?  
 12 A. Yes.  
 13 Q. And he said, What do you -- What do you  
 14 mean or what. And you said, What you just did. Is  
 15 that right?  
 16 A. Yes.  
 17 Q. And then you started to reach in your  
 18 shirt to pull your badge out, which was hanging on a  
 19 chain around your neck?  
 20 A. Yes.  
 21 Q. Do you know whether or not you got the  
 22 badge all the way out before Mr. Owensby started to  
 23 run?  
 24 A. Yes, I got it out.

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1 Q. You got it all the way out?  
2 A. Yes.  
3 Q. And at that point you said he pushed off,  
4 or how -- what -- what happened then?  
5 A. He pushed off.  
6 Q. Okay.  
7 MS. GEILER: I'm sorry. What was that?  
8 THE WITNESS: Pushed off. I'm sorry.  
9 MS. GEILER: Okay.  
10 Q. And you grabbed the hood of his sweat  
11 shirt?  
12 A. Yes.  
13 Q. And it -- it ripped and he wiggled out of  
14 or got out of the sweat shirt and took off running?  
15 A. Yes.  
16 Q. What did you do with the sweat shirt?  
17 A. Dropped it.  
18 Q. After --  
19 MR. HARDIN: I'm sorry. I couldn't hear  
20 the answer.  
21 THE WITNESS: Dropped it. Let it go.  
22 Q. After the incident did you return to get  
23 the sweat shirt?  
24 A. After the incident, to the best of my

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1 knowledge, Officer Jorg recovered the sweat shirt  
2 and there was some plastic Baggies. There weren't  
3 anything in them. They were just little small  
4 plastic Baggies in that same area where the -- that  
5 actually fell out of -- fell out of his pocket or  
6 off of his person when that happened, when the sweat  
7 shirt ripped.  
8 Q. Did you see them fall out of his pocket or  
9 off of his person?  
10 A. I saw something fall, but I didn't know  
11 what it was. When I came back, it was -- you know,  
12 Officer Jorg had picked up the sweat shirt and the  
13 Baggies.  
14 Q. Were you within the eyesight of Officer  
15 Jorg at that time?  
16 A. No.  
17 Q. So he could not see what was going on?  
18 A. See what?  
19 Q. Between you and Mr. Owensby and the sweat  
20 shirt.  
21 A. No.  
22 Q. How did he know --  
23 A. I told him. I told him what happened.  
24 Q. -- to come to the area to collect the

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1 sweat shirt?  
2 A. I told him what happened and where it  
3 happened. Because after it happened I -- me  
4 personally, I went back to in between the first set  
5 of buildings where I was chasing him, because I had  
6 my cell phone while I was chasing him and it fell.  
7 I went to go find my cell phone.  
8 Q. If you know, what happened to the sweat  
9 shirt and the plastic bags?  
10 A. After that do I know what happened to  
11 them?  
12 Q. Yeah. You said Officer Jorg picked it up.  
13 A. Uh-huh.  
14 Q. What happened to it after that?  
15 A. I -- I don't know. I assumed he tagged  
16 them or whatever. I don't know. I -- I don't know  
17 what happened to them after that.  
18 Q. You've never seen them since?  
19 A. No.  
20 Q. Did you ever fill out a property receipt  
21 or -- or some property chain of custody document on  
22 it?  
23 A. Nope. I didn't -- I didn't have the  
24 property.

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1 Q. Did you see -- well, he was your partner.  
2 Did -- did you see Officer Jorg fill out a property  
3 receipt?  
4 A. No. Huh-uh.  
5 Q. Did you see him put it in the car?  
6 A. No.  
7 Q. After Mr. Owensby wiggled out of the sweat  
8 shirt, you drew your weapon?  
9 A. Yes.  
10 Q. He ran away; there was a chase down to  
11 Rhode Island where Rhode Island intersects Seymour.  
12 Do you see that on the Exhibit 57, the aerial  
13 photograph?  
14 A. Yes.  
15 Q. And would you mark with the letter R in a  
16 circle where the intersection of Rhode Island and  
17 Seymour is.  
18 A. Circle it?  
19 Q. An R in a circle.  
20 A. Okay.  
21 Q. And I take it at -- at that point, if I'm  
22 understanding you correctly, you and Mr. Owensby ran  
23 around a car?  
24 A. Yes. It was a female --

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1 letting them know that we were there.  
2 Q. How -- how far was he from you when he  
3 said that?  
4 A. About, hmm, maybe from here to that wall  
5 (indicating).  
6 Q. What, ten feet?  
7 A. Oh, more than that.  
8 Q. More?  
9 A. Maybe --  
10 Q. 20 feet?  
11 A. Maybe. Maybe 20 feet. I don't know  
12 exactly.  
13 Q. All right. When you had walked up to Mr.  
14 Owensby, put your arm -- your left hand on his left  
15 shoulder, around him, when you were talking to him,  
16 were you looking at him?  
17 A. Directly at him, yes.  
18 Q. Did you notice if he had any facial hair?  
19 A. If he did, it was like real light. I  
20 don't remember having like a full beard or full  
21 mustache or anything.  
22 Q. Did he have the -- did he have -- how was  
23 his hair? Was it in dreadlocks, was it short-cut?  
24 How -- how was it?

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1 A. Like a short afro.  
2 Q. At that point, as I understand your  
3 testimony, you then return to Officer Jorg, tell him  
4 what happened, right?  
5 A. Uh-huh. Yes.  
6 Q. And maybe -- maybe you've already answered  
7 this, but do you recall whether or not Officer  
8 Walker joined you and Officer Jorg?  
9 A. I don't recall if he came back over there.  
10 Q. Do you recall who of the two people that  
11 were arrested, who was cited, their -- their names?  
12 A. I don't remember their names.  
13 Q. Let me show you -- let me show you what's  
14 previously been marked as Exhibit 6. These are  
15 two -- Exhibit 6 are two arrest and investigation  
16 reports. The first one is for a Jaysen Hill and the  
17 second is for a Jarvis Nixon.  
18 You see the arrest location is the Sam's  
19 Carry Out address of 2092 Seymour Avenue and the  
20 arresting officer is Jorg, with your name also  
21 listed. Do you see that?  
22 A. Yes.  
23 Q. Are these the two individuals that Officer  
24 Jorg arrested --

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1 A. Yes.  
2 Q. -- on that day?  
3 A. Yes.  
4 Q. Do you see that with respect to Jaysen  
5 Hill he is charged with criminal trespass and an  
6 open container?  
7 A. Yes.  
8 Q. Is there any reason why there's no charge  
9 of trafficking --  
10 A. Yes.  
11 Q. -- or any kind of drug activity?  
12 A. Yes.  
13 Q. Why?  
14 A. Because we didn't recover the drugs.  
15 Q. Did you recover any money, any large sums  
16 of money on these people out of these drug deals?  
17 A. I didn't.  
18 THE REPORTER: I'm sorry?  
19 THE WITNESS: I did not.  
20 Q. Do you know whether Officer Jorg did?  
21 A. Not to my knowledge he didn't.  
22 Q. So based on what you found on these  
23 individuals -- well, let's talk about the second  
24 one. Mr. Nixon is cited with criminal trespass.

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1 Same thing, there were no -- no drugs and no large  
2 sums of money found, correct?  
3 A. That's correct.  
4 Q. Based on what you found at the scene when  
5 you got there, there was no evidence of drug  
6 activity taking place, was there?  
7 A. Are you talking about after the fact?  
8 Q. When -- when you're -- based on the arrest  
9 and what you found on the person of these  
10 individuals.  
11 A. Okay. What we observed to put us there  
12 went with the two that got away.  
13 Q. Okay. That's what you believe?  
14 A. That's what I believe.  
15 Q. Let me show you what I'm going to mark as  
16 Exhibit 6A.  
17 (Deposition Exhibit 6A  
was marked for identi-  
18 fication.)  
19 Q. You see Exhibit 6A is an arrest and  
20 investigation report for one Dominic Peterson, same  
21 location, same date, same time. And the person is  
22 searched by Officer Walker, and this person is  
23 charged with criminal trespass. Was Mr. Peterson  
24 also involved in this?

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, : Case No. 01-CV-769  
vs. : (Judge S. A. Spiegel)  
 :  
CITY OF CINCINNATI, : VOLUME II  
et al., :  
 :  
Defendants. :  
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Continued videotaped deposition of DAVID  
WILLIAM HUNTER JR., a witness herein, called by the  
plaintiffs for cross-examination, pursuant to the  
Federal Rules of Civil Procedure, taken before me,  
Wendy Davies Welsh, a Registered Diplomate Reporter  
and Notary Public in and for the State of Ohio, at  
the offices of Helmer, Martins & Morgan Co. LPA,  
1900 Fourth & Walnut Centre, 105 East Fourth Street,  
Cincinnati, Ohio, on Thursday, December 4, 2003, at  
10:11 a.m.

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Estate of Roger D. Owensby, Jr.  
December 4, 2003

DAVID WILLIAM HUNTER, JR.  
VOLUME II

<p>Page 108</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. 4 Don Stiens, Esq. 5 Helmer, Martins &amp; Morgan Co. LPA 6 Suite 1900, Fourth &amp; Walnut Centre 7 105 East Fourth Street 8 Cincinnati, Ohio 45202 9 Phone: (513) 421-2400</p> <p>10 John J. Helbling, Esq. 11 The Helbling Law Firm, L.L.C. 12 3672 Springdale Road 13 Cincinnati, Ohio 45251 14 Phone: (513) 923-9740</p> <p>15 On behalf of the Defendants City of Golf Manor, 16 Stephen Tilley, Roby Helland and Chris 17 Campbell:</p> <p>18 Wilson G. Weisenfelder Jr., Esq. 19 Rendigs, Fry, Kiely &amp; Dennis 20 900 Fourth &amp; Vine Tower 21 One West Fourth Street 22 Cincinnati, Ohio 45202-3688 23 Phone: (513) 381-9200</p> <p>24 On behalf of the Defendants City of Cincinnati, Darren Sellers, and Jason Hodge:</p> <p>Gerí Hernandez Geiler, Esq. Assistant City Solicitor Department of Law Room 214, City Hall 801 Plum Street Cincinnati, Ohio 45202 Phone: (513) 352-3346</p>	<p>Page 110</p> <p>1 Federal Rules of Civil Procedure, may be taken at 2 this time by the notary; that said deposition may be 3 reduced to writing in stenotype by the notary, whose 4 notes may then be transcribed out of the presence of 5 the witness; and that proof of the official 6 character and qualifications of the notary is 7 expressly waived.</p> <p>8 I N D E X</p> <p>9 Examination by: Page</p> <p>10 Mr. Martins . . . . . 111, 277</p> <p>11 Mr. Hardin. . . . . 258</p> <p>12 - - -</p> <p>13 E X H I B I T S</p> <p>14 Deposition Exhibit 85 . . . . . Page 15 Deposition Exhibit 86 . . . . . 120 16 Deposition Exhibit 87 . . . . . 131 17 Deposition Exhibit 88 . . . . . 152 18 Deposition Exhibit 89 . . . . . 219 19 Deposition Exhibit 90 . . . . . 221 20 Deposition Exhibit 91 . . . . . 234 21 Deposition Exhibit 92 . . . . . 236 22 Deposition Exhibit 93 . . . . . 238 23 Deposition Exhibit 94 . . . . . 244 24 Deposition Exhibit 95 . . . . . 244 Deposition Exhibit 96 . . . . . 245</p>
<p>Page 109</p> <p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, 3 Patrick Caton, Jason Hodge, Victor Spellman and 4 Darren Sellers:</p> <p>5 Donald E. Hardin, Esq. 6 Hardin, Lefton, Lazarus &amp; Marks, LLC 7 915 Cincinnati Club Building 8 30 Garfield Place 9 Cincinnati, Ohio 45202 10 Phone: (513) 721-7300</p> <p>11 On behalf of David William Hunter Jr.:</p> <p>12 Jay Clark, Esq. 13 114 East 8th Street 14 Suite 400 15 Cincinnati, Ohio 45202 16 Phone (513) 587-2887</p> <p>17 Also present:</p> <p>18 Richard W. Grubb, Videographer</p> <p>19 Lisa Damstrom, Law Clerk</p> <p>20 Helmer, Martins &amp; Morgan Co., L.P.A.</p> <p>21 Roger Owensby Senior</p> <p>22 Brenda Owensby</p> <p>23 Shawn Owensby</p> <p>24 - - -</p> <p>STIPULATIONS</p> <p>It is stipulated by and among counsel for the respective parties that the deposition of DAVID WILLIAM HUNTER JR., a witness herein, called by the plaintiffs for cross-examination, pursuant to the</p>	<p>Page 111</p> <p>1 DAVID WILLIAM HUNTER JR.</p> <p>2 being by me previously duly cautioned and sworn, 3 deposes and says as follows:</p> <p>4 VIDEOGRAPHER: Time is 10:11 a.m. The 5 date is December the 4th. The year is 2003.</p> <p>6 We're on the record, sir.</p> <p>7 CONTINUED CROSS-EXAMINATION</p> <p>8 BY MR. MARTINS:</p> <p>9 Q. Officer Hunter, we're picking up where we 10 left off after November 6, your first couple hours 11 of your deposition. Remind you that you are still 12 under oath. Okay?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right. Have you talked with anyone 15 about your deposition on November 6th between 16 November 6th and today?</p> <p>17 A. No, besides my attorney.</p> <p>18 Q. Okay. Have you discussed the facts of the 19 Owensby case with anyone between November 6th and 20 today?</p> <p>21 A. No.</p> <p>22 Q. I want to direct your attention now to 23 November 7, 2000. I understand in the -- sometime 24 on that day you received an MTD message request for</p>

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(800) 578-1542 \* MERIT \* (513) 381-8228

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1 MS. GEILER: Thank you.  
2 THE WITNESS: You're welcome.  
3 BY MR. MARTINS:  
4 Q. What happened once you saw Mr. Owensby  
5 walking in the vicinity of Integrity Hall?  
6 A. Noth-- I brought it to Jorg and Caton's  
7 attention.  
8 Q. What did you say to them?  
9 A. I said, "That guy looked like the guy that  
10 ran from me. Remember when we" -- well, then I was  
11 talking to Officer Jorg. I said, "Remember when we  
12 was working old clothes that day?"  
13 Q. And what, if anything, did Jorg say in  
14 response?  
15 A. He asked me if I was sure if that was him.  
16 I said, "Well, from this distance and in this light,  
17 no, I can't be sure from here."  
18 Q. Were you able to tell at -- at that point  
19 in time whether or not Mr. Owensby had facial hair?  
20 A. From that distance?  
21 Q. From that distance.  
22 A. No.  
23 Q. What was it about the person that you saw  
24 by Integrity Hall that made you think it looked like

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1 the person that had run from you on September 27th?  
2 A. His height, size. And from where I was  
3 standing, he was walking at an angle, and I could  
4 get like a -- I could see like his face from a  
5 distance as far as like, you know, he looked similar  
6 to the person that ran from me at that time.  
7 Q. What was his height?  
8 A. I don't know his height.  
9 Q. Would it be fair to say he was average  
10 height?  
11 A. Yeah. Medium build.  
12 Q. Average height, medium build?  
13 A. (Nodding head.)  
14 Q. Okay.  
15 A. Uh-huh.  
16 Q. And if I understand you correctly, from  
17 his -- from that distance you could not tell if he  
18 had facial hair. Were there any other  
19 distinguishing characteristics about him that caused  
20 you to think that he was the person that ran from  
21 you on September 27?  
22 A. Like I say, he just -- he had the features  
23 of the person that I remember that had ran from  
24 me --

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1 Q. And what I'm --  
2 A. -- previously.  
3 Q. -- trying to understand is, what were  
4 those features?  
5 A. His -- his build, his height, his -- I  
6 mean, just -- his stature. And like I said, it  
7 wasn't light -- I mean, the sun wasn't up, but it  
8 was -- it was like not completely dark either.  
9 Q. Can you identify any other distinguishing  
10 feature of the person that you saw by Integrity Hall  
11 that caused you to think that that was the same  
12 person that ran from you on September 27th?  
13 A. No. Not -- I mean, no.  
14 Q. The -- when you said -- pointed him out to  
15 Officer Jorg, do you know whether or not Officer  
16 Jorg said something to you to the effect, words to  
17 the effect that that takes balls to walk past  
18 cruisers and uniformed officers?  
19 A. That sound familiar to me. That -- that  
20 does sound familiar to me, but I can't recall.  
21 Q. I'm -- I'm not sure I'm quoting it  
22 direct -- correctly, but some -- words to that  
23 effect.  
24 A. I'm just saying I remember hearing

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1 something like that.  
2 Q. Okay. Did Officer Caton say anything to  
3 you?  
4 A. I don't remember. I mean, I --  
5 Q. When you were talking to Officer Jorg,  
6 pointing out this person over by Integrity Hall, was  
7 Officer Caton there also?  
8 A. Yes.  
9 Q. Did Officer Jorg explain or -- or did you  
10 explain to Officer Caton who this person was that --  
11 that you were referring to?  
12 A. Well, he was standing there while me and  
13 Jorg was talking, so he could just gather it from  
14 that what we were talking about, because he knew  
15 about the incident.  
16 Q. And that's what I'm trying to understand,  
17 is how did he know about the incident?  
18 A. From Jorg, I'm sure.  
19 Q. Did -- did -- did you hear Jorg talk to  
20 him about the incident?  
21 A. No, but me and Jorg was talking back and  
22 forth about the incident.  
23 Q. And Caton was there?  
24 A. And Caton was there.

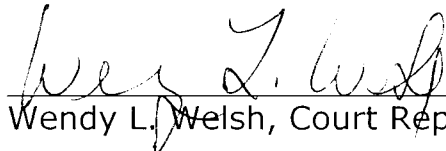
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AFFIDAVIT

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STATE OF OHIO :  
COUNTY OF HAMILTON : SS

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of DAVID WILLIAM HUNTER, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.

  
Wendy L. Welsh, Court Reporter

Sworn to before me this 27<sup>th</sup> day of January, 2004.



Thomas M. Blasing  
Notary Public - State of Ohio

My commission expires:  
May 4, 2004.